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PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket Number (Optional) NO189US	
I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)] on <u>October 14, 2008</u> Signature <u>Adil Musabji</u> Typed or printed name <u>Adil M. Musabji</u>		Application Number 10/825574 Filed 4/15/2004 First Named Inventor STUMANN UHLIR Art Unit 3714 Examiner KANG HU	
Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request. This request is being filed with a notice of appeal. The review is requested for the reason(s) stated on the attached sheet(s). Note: No more than five (5) pages may be provided.			
I am the <input type="checkbox"/> applicant/inventor. <input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96) <input type="checkbox"/> attorney or agent of record. Registration number _____ <input checked="" type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34 58728		Signature <u>Adil Musabji</u> Typed or printed name <u>Adil M. Musabji</u> Telephone number <u>(312) 780-3054</u> Date <u>October 14, 2008</u>	
NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.			
<input type="checkbox"/> *Total of _____ forms are submitted.			

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting this completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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OCT 14 2008

PATENT
Case No. N0189US**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re Application of:)
Kurt Brooks Uhler, et al.)
Serial No. 10/825,574) Group: 3714
Title: METHOD FOR COMPARING) Examiner:
PERFORMANCES ON REMOTELY) Kang Hu
LOCATED COURSES)
Filed: April 15, 2004)

REASONS FOR PRE-APPEAL BRIEF REQUEST FOR REVIEW

Mail Stop AF
Commissioner for Patents
Alexandria, Virginia 22313-1450

Dear Sir:

Applicants request review of the Final Office Action mailed May 14, 2008 ("the Final Office Action") and the Advisory Action mailed September 23, 2008 ("the Advisory Action") because the Examiner made material errors of fact and law in rejecting the Applicants' claims. As explained below, the Examiner's rejection of the claims is premised on factual and legal errors, and, therefore, the rejection should be withdrawn.

Ser. No. 10/825,574

Pre-Appeal Brief dated October 14, 2008**I. STATUS OF THE CLAIMS**

Claims 2-8, 11-14, 17-19, 23, and 36-38 are currently pending. Claims 36-38 are independent claims. Claims 2-8, 11-14, 17-19, 23, and 36-38 stand rejected as being unpatentable over U.S. Pat. No. 6,463,385 ("Fry") in view of U.S. Pat. No. 6,080,063 ("Khosla").

II. CLAIMED INVENTION

Applicants pending claims relate to facilitating performances in events, such as facilitating a first performance by a participant in an event that includes movement along a first course located in a first geographic area. For example, independent claim 36 recites, *inter alia*, "comparing the first performance to a second performance, wherein the second performance is along the second course" in which the second course is "located in a second geographic area different from the first geographic area" of the first course. Independent claims 37 and 38 recite similar features.

III. CLEAR FACTUAL DEFICIENCY OF THE REJECTION

In the Final Office Action (page3), Examiner Hu asserted, without specific citation, that Fry teaches comparing a first performance (along a first course) to a second performance, wherein the second performance is along a second course that is in a different geographic area than the first course.

In Applicants' response, submitted August 14, 2008, Applicants pointed out that the combination of the cited references did not disclose all the claimed features. Specifically, Applicants asserted that Fry discloses a sports-related measurement system having an integral global satellite positioning ("GPS") receiver and computer interfacing capability. (Fry, column 2, lines 45-48). Fry discloses monitoring performance characteristics between individuals on one particular course in which the individuals can rate their own performances relative to others (Fry, column 7, lines 35-39 and 54-59), not comparing performances occurring on two separate courses in different geographic areas.

Ser. No. 10/825,574

Pre-Appeal Brief dated October 14, 2008

In the Advisory Action, Examiner Hu asserted that Fry teaches comparing performances at two different courses by pointing to column 1, lines 55-60 and column 2, lines 5-10 of Fry.

Within the Background section of Fry, column 1, lines 55-60 mention the U.S. patent 5,335,188 ("Brisson") that discloses a device for monitoring and comparing present, past, and ideal performance on an exercise machine such as a bicycle. The system stores a set of performance data in memory, which can then be compared against a stored, user selected performance data.

However, there is no suggestion or teaching of comparing performance data on a first course to performance data on a second course that is located in a different geographic area than the first course. Actually, Brisson teaches comparing performance data regarding performances on the same course or training course. (Brisson, column 2, lines 40-64 and column 5, lines 6-30). For example, if the cycle computer in Brisson is showing an elapsed time for a current ride, it also shows the amount of time that was required to reach the *same point along the course* (Brisson, column 5, lines 26-30), and the performance of one athlete may be recorded as a standard to be used by other athletes who wish to emulate the performance of the first athlete *along the same training course*. (Brisson, column 2, lines 61-64).

Still within the Background section of Fry, Column 2, lines 5-10 further describes the Brisson patent by stating that if a user rides on many different routes, the cycle computer may not have enough memory to save all ride data, in which case the connector (65) may be used to transfer a larger number of pace files to an external computer such as a PC.

Again, there is no suggestion or teaching of comparing performance data on a first course to performance data on a second course that is located in a different geographic area than the first course. Even though multiple performance data on different routes are stored, there is no teaching or suggestion of comparing performance data along different geographically located courses with each other. According to the cited references, performance data along a course will be compared to other performance data along the same course.

Ser. No. 10/825,574

Pre-Appeal Brief dated October 14, 2008

In the Advisory Action, Examiner Hu further asserted that no two races are the same because athletes can pick different points of travel along a course, such as one athlete using an apex or outside point to pass someone, and because physiological and weather conditions may not be exactly the same.

It is indicative of the weakness of this rejection that Examiner Hu needs to resort to a claim interpretation that no reasonable person would make. However, even if one entertains Examiner Hu's assertions, such assertions still do not factually teach or suggest or render obvious comparing performance data on a first course to performance data on a second course that is located in a different geographic area than the first course. For example, even though athletes may race along different points along the same course, performance data of the athletes (according to the cited references) are still compared in regards to the same course, not separate courses located in different geographic areas. If one athlete competes a little to the right and another athlete competes a little to the left, both athletes are still running on the same course. Furthermore, differences in physiological conditions and weather conditions do not change the fact that different performance data are still compared in reference to one same course, according to the cited references. Physiological conditions and weather conditions do not change the geographical location of a course.

Accordingly, Applicants believe that Examiner Hu's analysis with respect to the cited references is factually incorrect.

IV. CLEAR LEGAL DEFICIENCY OF THE REJECTION

"The key to supporting any rejection under 35 U.S.C. § 103 is the clear articulation of the reason(s) why the claimed invention would have been obvious." MPEP § 2141, III. The Examiner has not provided adequate factual findings or rationale to support clear articulated reason(s) to reject the claims under the legal standard of obviousness. Specifically, the Examiner has failed to provide support for at least comparing a first performance along a first course to a second performance along a second course in which the second course is in a different geographic area than the first

Ser. No. 10/825,574

Pre-Appeal Brief dated October 14, 2008

course. Accordingly, the combination of the references along with the assertions of the Examiner do not render the Applicants' claims unpatentable.

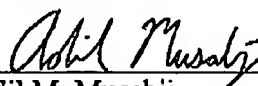
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OCT 14 2008

V. CONCLUSION

For the foregoing reasons, Applicants submit that all of the pending claims should be allowed.

Respectfully submitted,



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